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Matthew Brown, David Arnaut, and Caleb Honl*

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION**

**NORMAN WICKS SR AND NORMAN
WICKS JR,**

3:22-cv-00446-HZ

PLAINTIFFS,

**DEFENDANT CITY OF PORTLAND'S
MOTION TO COMPEL DISCOVERY**

v.

**CITY OF PORTLAND, MATTHEW
BROWN, CRAIG LEHMAN, DAVID
ARNAUT, and CALEB HONL,**

DEFENDANTS.

ORAL ARGUMENT REQUESTED

Defendant City of Portland ("City" or "Defendant") requests oral argument on its Motion to Compel Discovery ("Motion"). The time estimated is 30 minutes.

L.R. 7-1(C) Certification

Pursuant to Local Rule 7-1(A), counsel for the City represents that he conferred with *Pro Se* Plaintiffs Norman Wicks Sr. and Norman Wicks Jr. ("Plaintiffs") making a good-faith effort to resolve the dispute without success. Plaintiff's former counsel provided only a mailing address to contact Plaintiffs. Counsel sent two letters to the Plaintiffs seeking a time for and a method of

conferring with Plaintiffs. (Porter Decl., ¶¶ 6, 7; Exs. 5 and 6.). On May 21, 2024, a person called counsel, identified themselves as Norman Wicks Sr., referencing a letter he received from counsel's office and indicated he would not represent himself and would seek a setover. Before counsel could respond Mr. Wicks Sr. hung up. (Porter Decl., ¶¶ 8, 9).

I. MOTION

Pursuant to Fed. R. Civ. P. 37, Fed. R. Civ. P. 30, and L.R. 37, the City moves the Court to compel Plaintiffs to produce discovery. This motion relies on the Declaration of Michael Porter, the exhibits attached thereto, and the Court record in this matter.

II. FACTUAL BACKGROUND

This case arises from the Plaintiffs' allegations that Portland Police Bureau officers lacked probable cause and acted with improper motive when, in 2022, they obtained a warrant as part of a criminal investigation, resulting in the seizure of the Plaintiffs' vehicle. Additionally, in 2023, the Portland Bureau of Transportation (PBOT) towed another vehicle under the authority of a Portland City Ordinance. Plaintiffs further allege that Mr. Wicks Sr. was treated improperly following the two seizures, including being taken to the hospital for treatment while his primary caregiver, Mr. Wicks Jr., was being processed after arrests for failing to report his new address as required by a previous criminal conviction.

Defendant timely submitted requests for production and responses to interrogatories. Responses to both are critical to Defendant's ability to properly prepare for a deposition of Norman Wicks Jr. and to defend against the allegations in the complaint. The responses to both the request for production and interrogatories remain incomplete. (Porter Decl., ¶¶ 2-7; Exs. 1-6).

On May 21, 2024, the undersigned spoke with Mr. Wicks Sr., who acknowledged receipt of the May 16, 2024 letter. Mr. Wicks Sr. expressed intent to ask the Court to appoint counsel and to

seek a stay of current deadlines pending the appointment of counsel. (Porter Decl., ¶ 8). It was unclear whether Mr. Wicks Sr. intended to speak for Mr. Wicks Jr. as well. As of June 21, 2024, Mr. Wicks Jr. has not contacted the undersigned regarding the May 16, 2024, letter addressed to him. Mr. Wicks Sr. hung up before counsel had the opportunity to confer on the outstanding issues or clarify whether Mr. Wicks Sr. spoke for Mr. Wicks Jr. (Porter Decl., ¶¶ 8, 10). On May 21, 2024, counsel sent a second letter to Mr. Wicks Sr. attempting again to obtain discovery and to confer on the outstanding discovery issues and to date has received no response. (Porter Decl., ¶ 8; Ex.7).

The City now brings this motion to compel discovery.

III. POINTS AND AUTHORITIES

A. Standard of Review

Under Rule 37 of the Federal Rules of Civil Procedure, a party may move to compel discovery where the non-movant “fails to produce documents or fails to respond that inspection will be permitted—or fails to permit inspection—as requested under Rule 34. Fed. R. Civ. P. 34(a)(3)(B)(iv). *Harris v. City of Portland Police Dep’t*, No. 3:15-CV-00853-HZ, 2017 WL 517793, at *1 (D. Or. Feb. 8, 2017). Parties “may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party.” *Id.* Fed. R. Civ. P. 26(b)(1). “Relevant information for purposes of discovery is information reasonably calculated to lead to the discovery of admissible evidence. District courts have broad discretion in determining relevancy for discovery purposes.” *Survivor Media, Inc. v. Survivor Prods.*, 406 F.3d 625, 635 (9th Cir. 2005). *Harris* at *1. When a party moves to compel discovery, the court has “broad discretion * * * to permit or deny discovery” *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002).

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B. Analysis

The discovery deadline in this matter has been extended to June 21, 2024, and per the Court's order, no further extension will be granted. (ECF 84). As outlined in Exhibits 5 and 6 attached to counsel's declaration, there remain a significant number of responses to Defendant's request for production and interrogatories that remain unanswered. (Porter Decl., ¶¶ 6, 7; Exs. 5 and 6). Defendant brings this motion as Plaintiffs have refused to participate fully in discovery and the deadline set by the Court will expire today. Defendant requests an Order from the Court compelling Plaintiffs' full compliance with the request for production and responses to its interrogatories. Should the Plaintiffs fail to produce the remaining discovery, the City seeks the sanction of dismissal of Plaintiffs' claims against Defendants with prejudice.

IV. CONCLUSION

Based on the forgoing, the City moves the Court to compel the discovery of Plaintiffs. Should Plaintiffs refuse to produce discovery, the City moves for dismissal of Plaintiffs Norman Wicks Sr.'s and Norman Wicks Jr.'s claims against Defendants with prejudice as a sanction.

DATED: June 21, 2024

Respectfully submitted,

/s/ Michael K. Porter

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 Sr. Deputy City Attorney
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*Of Attorneys for Defendants City of Portland,
 Matthew Brown, David Arnaut, and Caleb Honl*

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing DEFENDANT CITY OF PORTLAND'S
MOTION TO COMPEL DISCOVERY on:

Norman Wicks, Jr.
P.O. Box 29115
Portland, OR 97209
Plaintiff Pro Se

Norman Wicks, Sr.
P.O. Box 29115
Portland, OR 97209
Plaintiff Pro Se

on June 21, 2024, by causing a full, true and correct copy thereof, addressed to the last-known
address (or fax number) of said Plaintiffs, to be sent by the following method(s):

- ☒ by **mail** in a sealed envelope, with postage paid, and deposited with the U.S. Postal
Service in Portland, Oregon.
- ☐ by **hand delivery**.
- ☐ by **email** pursuant to LR 9-2(b).
- ☐ by **facsimile transmission**.

DATED: June 21, 2024

Respectfully submitted,

/s/ Michael K. Porter

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